



# PUBLIC NOTICE

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## WIRELESS TELECOMMUNICATIONS BUREAU ACCEPTS CONSTRUCTION NOTIFICATIONS IN THE COMMON CARRIER POINT-TO-POINT MICROWAVE SERVICE

Licensees in the 38.6 – 40.0. GHz band Common Carrier Point-to-Point Microwave Service (39 GHz band) may provide any service consistent with the Commission's Rules and their regulatory status,<sup>1</sup> subject to a ten-year term from the initial license grant date.<sup>2</sup> At the end of the ten year period, licensees are required to submit an acceptable showing to the Commission demonstrating that they are providing "substantial service" in each licensed area.<sup>3</sup> In adopting the substantial service requirement for licensees in the 39 GHz band, the Commission explained that "the performance requirements we establish herein will permit flexibility in system design and market development, yet provide a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public."<sup>4</sup> Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.<sup>5</sup>

The Commission elaborated on what may constitute "substantial service" for 39 GHz band by offering some specific examples, which are sometimes referred to as "safe harbors," to provide 39 GHz band licensees with a degree of certainty as to how to comply with the substantial service requirement by the end of the initial license term.<sup>6</sup> The Commission explained that a 39 GHz band licensee may fall within a "safe harbor" by constructing four permanent links per one million people in its licensed service area.<sup>7</sup> The "safe harbor" only serves as an example of what may constitute substantial service, and the

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<sup>1</sup> See 47 C.F.R. § 101.17.

<sup>2</sup> See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600, 18620-21 ¶ 36 (1997) ("39 GHz R&O"). Pursuant to 47 C.F.R. § 101.67, 39 GHz licenses are issued for a period not to exceed ten years.

<sup>3</sup> See 47 C.F.R. § 101.17(a).

<sup>4</sup> 39 GHz R&O, 12 FCC Rcd at 18623 ¶ 42; see also *id.* at 18625 ¶ 46 ("This approach will permit flexibility in system design and market development, while ensuring that service is being provided to the public."); *id.* at 18626 ¶ 46 ("This revised performance standard should ensure that meaningful service will be provided without unduly restricting service offerings.").

<sup>5</sup> See 47 C.F.R. § 101.17(b).

<sup>6</sup> See 39 GHz R&O, 12 FCC Rcd at 18626 ¶ 46.

<sup>7</sup> See *Id.*

Commission reviews licensees' showings on a case-by-case basis taking into account the differences among licensees.<sup>8</sup>

By this public notice, we accept the construction notifications filed by Biztel, Inc. for Stations WPNJ769 (File No. 0003311672) and WMT630 (File No. 0003311674). We find that the substantial service showings attached to those construction notifications demonstrate that the licensees have sufficiently built out the licenses in each 39 GHz band market to satisfy the Commission's substantial service requirement set forth in Section 101.17(a) of the Commission's Rules.<sup>9</sup> Specifically, we find the licensees' construction in each BTA satisfies the point-to-point safe harbor.

Accordingly, we accept these notifications pursuant to Section 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(a), and Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, because it will serve the public interest, convenience and necessity.

For further information, contact John Schauble, Esq., of the Broadband Division, Wireless Telecommunications Bureau at (202) 418-0797, TTY (202) 418-7233, or via e-mail to [John.Schauble@fcc.gov](mailto:John.Schauble@fcc.gov).

By the Chief, Broadband Division, Wireless Telecommunications Bureau.

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<sup>8</sup> See *39 GHz R&O*, 12 FCC Rcd at 18624-25 ¶¶ 45-46.

<sup>9</sup> 47 C.F.R. § 101.17(a).